

**ADOT File No.: IGA/JPA 09-028 I**  
**AG Contract No.: P001-2009-003003**  
**Project: SR 202L**  
**Section: I-10/ SR51 TI and SR101L**  
**TRACS No.: H6871 01D/01C**  
**Budget Source Item No.: 41108/41209**

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE ARIZONA DEPARTMENT OF TRANSPORTATION  
AND  
THE CITY OF TEMPE

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2009, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE of ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TEMPE, an Arizona municipal corporation, acting by and through its MAYOR AND CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

### **I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 9-276 and § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute the Agreement on behalf of the City.
3. The State is improving State Route (SR) 202L, Red Mountain Freeway, between Interstate 10 (I-10)/SR 51 Traffic Interchange (TI) and SR 101L, Price Freeway in Tempe, Arizona, under Project TRACS No. H687101C, herein referred to as the "Project".
4. The Project will require the relocation of a portion of the Tempe Path constructed along SR202L within State right of way. At its sole costs, the State agrees to relocate the Tempe Path from within its right of way on the south side of SR202L, approximately between Station 208+60 and Station 227+10, as part of the Project, shown on the attached Exhibit A, attached hereto and made a part hereof.
5. The purpose of this Agreement is to mutually promote the communication and cooperative actions by the Parties, relative to the State's ongoing construction of the Project. The City understands that the State will complete the Project using the design-build delivery method, involving an expedited review process to ensure the Project remains on schedule.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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## **II. SCOPE OF WORK**

1. The State will:

a. Be responsible for the overall management of the Project and coordination with the City relative to the Tempe Path relocation.

b. Prepare all necessary design, specifications and technical documents for the Project and the Tempe Path relocation. Submit design documents, relative to the Tempe Path relocation, to the City for review and comment.

c. Notify the City of all design coordination meetings for the Project relative to the Tempe Path relocation.

d. Obtain all permits and necessary temporary construction easements (TCE's) to facilitate construction of the Tempe Path detours and construction of the permanent Tempe Path.

e. Notify the City of weekly construction meetings relative to the Tempe Path relocation.

f. Administer the construction contract, inspect all work as performed, and make all payments to the contractor.

g. Provide copies of inspection logs and materials test reports to the City, as appropriate, relative to the Tempe Path relocation.

h. Construct the permanent Tempe Path relocation in accordance with applicable State and City standards, and applicable codes.

i. Make its best efforts to enable trail lighting outside the disturbed construction area to remain operational during construction.

j. Grant or confirm, per established procedures of the State's Phoenix Maintenance District Permit Office, that the City has a valid annual city-wide blanket permit on file, for routine/normal landscape maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree any new construction or installation shall require a separate permit through the State's Phoenix Maintenance District Permit Supervisor, as per the Phoenix Maintenance District's established procedures.

k. Coordinate with the City any necessary details to allow the City to perform relocation of existing artwork, and complete the reinstallation of the public art after new freeway walls are in place.

l. Upon completion of construction of the Tempe Path relocation by the State, accept the Tempe Path relocation as complete.

m. Provide the City with a set of as-built drawings upon completion of the permanent Tempe Path relocation.

n. Have no further obligations under this Agreement relative to the Tempe Path relocation upon completion of construction and acceptance of the Project by the State. No warranty period for the Tempe Path relocation will be provided.

2. The City will:

- a. Perform reviews of the design documents for the Tempe Path relocation within the 10 business-day time-frame stipulated in the design-build contract.
- b. Provide the State (Project Manager/Resident Engineer) written concurrence and acceptance of the design of the Tempe Path relocation.
- c. Participate in routine observations relative to the Tempe Path relocation, as required to keep the Project on schedule.
- d. Attend all design coordination meetings for the Project, relative to the Tempe Path relocation.
- e. Coordinate with the State and take such actions as are necessary to enable trail lighting outside the construction area remain in service during construction of the Project.
- f. Provide all permits and temporary construction easements (TCEs) necessary to facilitate construction of the temporary path detours and construction of the permanent Tempe Path relocation.
- g. Attend weekly construction coordination meetings for the Project, relative to the Tempe Path relocation. Attend the inventory field meeting and the final walk through for the Tempe Path relocation.
- h. Coordinate with the State, the relocation of existing artwork and reinstallation of the public art after new freeway walls are in place.
- i. Upon completion and acceptance of the Tempe Path relocation by the State, through the City Engineer, provide the State with a letter as it relates to the Tempe Path relocation, accepting the Tempe Path relocation as complete.
- j. Upon completion and acceptance of the Tempe Path relocation by the State, resume ownership/jurisdiction of the newly constructed Tempe Path that lies outside of the State's existing rights of way. Maintain and be responsible for all liabilities associated with the Tempe Path upon completion of construction and acceptance by the State.
- k. Obtain, per established procedures of the State's Phoenix Maintenance District Permit Office, a valid annual citywide blanket permit for the maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Phoenix Maintenance District's established procedures, of which may be obtained through the Phoenix Maintenance District Office referenced herein.
- l. Be responsible for any future relocation of the Tempe Path.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall become effective upon filing with the Secretary of State.
2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of construction and acceptance of the Project by the State as it relates to the Tempe Path relocation, provided however, this Agreement may be cancelled at any time upon thirty (30) days written notice to either Party by either Party. Notwithstanding the preceding sentence, the City's obligations to maintain the Tempe Path and pay all associated electrical power shall be perpetual.

3. It is understood and agreed that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any negligent activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agents, officers and employees, or its independent contractors. Costs incurred by either Party, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

4. The Parties agree that they will perform their responsibilities hereunder consistent with this Agreement regardless whether there is an increase or decrease in cost.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of State Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of the Project, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

9. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meaning set forth in Arizona Revised Statutes § 35-391 or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

10. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

11. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

12. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

If to ADOT:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007-3212  
Fax: 602-712-7424

If to City:

City of Tempe  
ATTN: City Manager  
31 E. 5<sup>th</sup> Street  
Tempe, AZ 85281  
PHONE: (480) 350-8884  
FAX: (480) 350-8930

With a copy to:

Arizona Department of Transportation  
Valley Project Management  
ATTN: SR202L Project Manager  
1611 W. Jackson St, Mail Drop EM01  
Phoenix, Arizona 85007  
Fax: 602-712-3038

With a copy to:

City of Tempe  
ATTN: Glenn Kephart  
Public Works Manager  
31 East 5<sup>th</sup> Street  
P.O. Box 5002  
Tempe, AZ 85280-5002  
PHONE: (480) 350-8487  
FAX: (480) 858-2070

For Maintenance Permit – Contact:

Arizona Department of Transportation  
Phoenix Maintenance District Permits Office  
2140 S 22nd Ave, Mail Drop PM00  
Phoenix, AZ 85017

13. Pursuant to Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein, is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF TEMPE**

**ARIZONA DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
HUGH HALLMAN  
Mayor

By \_\_\_\_\_  
FLOYD P. ROEHRICH, Jr, P.E.  
State Engineer

Attest:

By \_\_\_\_\_  
JAN HORT  
City Clerk

**ATTORNEY APPROVAL FORM FOR THE CITY OF TEMPE**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF TEMPE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
City Attorney